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# ASBESTOS

## Programs Branch

# UPDATE

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### FROM THE EDITOR

This bulletin is published every 4 months. We hope that it serves as a device to keep everyone involved in the industry up to date with any changes that have occurred. After several years of overseeing the asbestos industry, and hearing your suggestions for some way to keep in contact with you, we have begun this bulletin. If anyone has any suggestions to make the bulletin more efficient, or has any ideas you would like to share with your colleagues, please send those ideas to my attention. We will be happy to include anything that involves the industry.

In our May - August issue, policy letters were mentioned. The first three of many are now available at our office. When inquiring, ask for POLICY LETTER 295.34 - 1, Utility Work In Public Buildings, POLICY LETTER 295.34(c) - 1, What Constitutes An Acceptable Asbestos Survey, or POLICY LETTER 295.36 - 1, Removal of Resilient Floor Covering Materials. Also, as mentioned, they will be mailed to licensed training providers, licensed consultants, licensed contractors, and other persons on our mailing list. Another item of interest, the asbestos information poster mentioned in §295.58 (j)(1) Operation: General Requirements is being developed at this time. The poster will be available around Mid Spring 1995. It will be bi-lingual and will also be distributed to the above listed licensees.

For further information on anything mentioned in this bulletin or any matter concerning the asbestos industry, please feel free to contact us at 1-800-572-5548 in Texas, or 512 834-6610.

Carole Williams  
Public Information Officer

## ASBESTOS REGULATIONS INTERPRETATIONS

Many requirements in the asbestos regulations are often confusing. In this, and subsequent issues of this bulletin, we will attempt to augment information which has or will be issued in a policy letter.

### Government Ordered Demolition

Cities have the legal authority and responsibility to remove, or cause to be removed, buildings and other structures which are a hazard to the public health and safety. The declaration by a city does not equal or meet the requirements of imminent collapse, which is the only way that

an asbestos survey is not required on a public building. An inspection is required, unless a competent authority, such as a professional engineer, has declared the building to be too dangerous for persons to enter for an inspection. A Phase I Environmental Site Assessment does not constitute an asbestos survey.

In the case of imminent collapse, the building may be demolished with the asbestos containing materials as long as the requirements of 40 CFR Part 61, subpart M, National Emissions Standards for Hazardous Air Pollutants (NESHAP) are followed. The entire building must be treated as asbestos-containing material unless an acceptable survey has previously proven the absence of asbestos. The requirement for keeping the building adequately wetted also requires that there be no contaminated runoff. In other words, a fire hose will not be acceptable if it is causing the material to separate from the structure due to the extreme pressure. The water containing asbestos fibers must be filtered to remove the possibility of contamination of ground water or storm sewer systems.

### Demolition by Contract

A contractor demolishing a building containing regulated asbestos containing materials (RACM) is required to have a NESHAP trained person on site during all phases of demolition. The training may be from either an EPA conducted NESHAP course or a course taken under the EPA's Model Accreditation Plan, such as a supervisors course. If all RACM has been removed from a building, an accredited person is not required to be on site. However, the contractor will be in violation of NESHAP if additional material is found and disturbed during demolition. Since contractors typically have a superintendent or general supervisor on site, it is recommended that this person be trained so that appropriate action is taken in case of uncovering suspected RACM. This will help a contractor avoid a violation.

### Buildings and Residences on a Right-of-Way and Public Projects

Buildings and private residences on a public project or right-of-way fall under the provisions of NESHAP, and a public building on a public project or right-of-way would fall under the Texas law, the Texas Asbestos Health Protection Act (TAHPA). If buildings, private residences, or public buildings are on a public project or right-of-way, notification is required. The RACM is removed, and the training requirements for public and commercial buildings must be met under the provisions of both NESHAP and the Asbestos School Hazard Abatement Reauthorization Act of 1990 (ASHARA). ASHARA extended the training requirements for work in schools to all public and commercial buildings as defined under the federal definitions. The only buildings which may be exempt, are those which will be moved from the right-of-way by the original building owner prior to the government taking the land. The governmental agency controlling a public project or right-of-way retains the responsibility for the asbestos if those buildings are to be demolished by the original owner. This in-

cludes providing the owner the information required to remain in compliance with the state and federal asbestos laws. The controlling governmental agency must follow all the applicable regulations if the agency will cause the buildings to be demolished by contract. In such cases where private residences are concerned, if the ownership does not reside with the state or city government, but with the private owner the building is not subject to NESHAP or TAHPA. Such a building must always have been a private residence and never used for commercial purposes.

### Departmental Assistance

The policy of the Department of Health is to gain voluntary compliance. To this end, we in the Asbestos Programs, are extending our outreach programs to the maximum extent possible. This bulletin is a part of that program, as well as policy letters and presentations at various conferences. We welcome the opportunity to speak at professional conferences. Should you have any questions regarding procedures, please call the regional office first. These are our representatives in the field and have a greater knowledge of local projects. Whenever doubt arises regarding the Rules, the field representatives collaborate with the Austin office in order to provide the public with the most accurate rule and/or policy interpretation. We have several cases in progress which indicate that flooring companies removing floor tile, although claiming to, are not following the Resilient Floor Covering Institute (RFCI) guidelines as required. It should also be noted that the maximum first-time penalty is now \$10,000 per day per violation. When in doubt, please call to ensure your understanding of the Rules.

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## ENFORCEMENT PROGRAM

### NOTIFICATION AND INFORMATION SECTION

The Notification and Information Section of the Asbestos Programs Branch began sending out invoices on September 1, 1994 for fees calculated from information submitted in renovation and/or demolition notifications. The responsibility to assess fees that are based upon the amount of friable asbestos (Regulated Asbestos-Containing Material - RACM) that is removed became part of the Texas Asbestos Health Protection Rules (TAHPR) when the Rules were revised during the same time period. The Rules officially transferred the authority to collect fees for the National Emission Standards for Hazardous Air Pollutants (NESHAP) from the Texas Natural Resource Conservation Commission (TNRCC) to the Texas Department of Health (TDH). The revised Rules also established the provisions to collect fees for asbestos abatement in public buildings. The responsibility to collect fees has triggered a new set of problems for the Notification Section.

TAHPR requires that the invoice be sent to the facility owner. Some confusion has occurred, especially in large organizations, because the invoices end up in the accounting department for a facility owner. Often the accounting departments are unable to pay the invoices because they are not able to connect the invoice to the renovation/demolition project. The invoices can be sent to a particular person within an organization, usually the head of facility engineering, the physical plant manager, etc. This person should be able to provide any internal information that is necessary in order that the invoice be paid. The person's name should

be added by writing "Attn:\_" next to the facility owner's name on the first line of Section #3 of the notification form.

Another method to alleviate the internal accounting problem is to add a contract or project number, or whatever means is used to identify a project, next to the facility name on Section #4 on the notification form. This can be extremely useful if there is more than one project being performed simultaneously. The notification number that is assigned by the TDH is not based upon any information that is included in the notification, so an internal number may be necessary for a facility's own accounting purposes. A purchase order or account number will not be issued for the notification because all of our data and files are based on the notification number.

An invoice for the notification fee is automatically printed after a notification form is entered into a database. The billing program is directly linked to the notification program and information that is included on the invoice comes from information that is submitted on the notification form. Addressee information is transferred from Section #3 on the notification form. The name of the facility on the first line of Section #4, is also printed on the invoice.

Another point that needs to be stressed is that it is imperative that the invoice (keep a copy for your records) be returned with the fee. This is the only way that the fee will be credited towards the notification file. TDH is an extremely large organization and each program has its own budget number. The fiscal division can not track and credit a fee unless certain information that is on the invoice is provided to them. In addition, the Notification Section can not credit the fee without the notification number.

It is also not possible to rectify a notification account when the fees from more than one program within TDH are combined. This stipulation will be emphasized even more when a lockbox system becomes activated in the near future. The lockbox system will utilize coupons which will be printed based upon the notifications that are entered into our database. The coupons will have the same information as the current invoices, and they must be returned with your remittance for the fees. The banking system that will be used to accept the fees is automated and will be unable to credit a fee that is not accompanied with a coupon. The rectification of fees which do not match the assessed amount on the coupon will have to be done manually by the Asbestos Program, and there will continue to be delays and confusion if remittances are not correctly identified.

The notification staff have been making a concerted effort in both searching out the troublesome invoices and educating the facility owners about the new fee responsibilities. We encourage telephone calls from owners that are concerned about the accuracy of their fee or need additional information to identify the facility. The errors in this new program are gradually being corrected and, as a result, the need for assistance should gradually diminish.

### ENFORCEMENT SECTION

In the May - August issue of the Asbestos Programs Branch Update, it was noted that over \$33,000 of Agreed Orders were pending. Legal restrictions prohibit publication of the names of the violators until the Final Order is issued by the Commissioner of Health. Over \$512,000 in Notice of Violations have been issued at this time. There are 67 Notice of Violations still outstanding. Nine (9) additional cases have been closed, with a total administrative penalty of \$35,050. They are as follows:

# LICENSING PROGRAM

## INTRODUCTION - FROM THE PROGRAM ADMINISTRATOR

The Licensing Program is composed of two Sections which I administer: the Asbestos Professional License Section (supervised by Kathy Reeves) and the Asbestos Trainer Licensing Section (supervised by Athan Ogoh). As Program Administrator, I am committed to ensuring our customers, the Public, receive a high degree of service. Our mission in this Program includes making every effort to fulfill your needs efficiently.

Chuck McLendon  
Program Administrator

## ASBESTOS TRAINER LICENSING SECTION

### Asbestos State Accreditation Examination

The procedures for implementation of the asbestos state accreditation examination have been finalized. The examination requirement was effective September 22, 1994 and shall effect the following individual license categories: Operations and Maintenance Supervisor (restricted), Abatement Supervisor, Individual Consultant, Project Manager, Inspector, Individual Management Planner and Air Monitoring Technician. The examination will be widely administered at testing centers located in Austin, Houston, Arlington, Tyler, El Paso and Harlingen. The first round of examinations will be given in December. To request a registration manual and calendar or for more information, contact the Asbestos Trainer Licensing Section at 1-800-572-5548 (in Texas) or 512-834-6610.

### Occupational Safety Training Institute Update

During the month of November, Occupational Safety Training Institute (OSTI), located in Houston, Texas closed their doors. This company provided numerous asbestos and non-asbestos training courses to many students in Texas. As a result of the publicity surrounding the closure of OSTI, the Department was flooded with telephone calls from affected students. After discussions between the Department and OSTI officials, the company has issued the following agreement: "Certificates of completion will be mailed by December 2, 1994 to all students who have completed asbestos courses at OSTI as of November 11, 1994. Certificates of completion will be mailed by December 21, 1994 to all students who have completed non-asbestos courses at OSTI as of November 11, 1994". Students should contact OSTI at (713) 731-2245 to inquire further about their training certificates. If certificates have not been received in accordance with the dates specified, students may contact the Asbestos Trainer Licensing Section for assistance at 512-834-6600 or 1-800-572-5548.

### Training Providers No Longer Approved

As of October 1, 1994, the following training providers were no longer approved to teach any asbestos training courses due to their failure to self-certify under the EPA's revised Model Accreditation Plan, 40 CFR part 763, Appendix C to Subpart E: CAM Environmental Services, Diversified Training Group, El Paso Community College, Lee and Sims Environmental Services, and Pollution Control Management Corporation. As of October 4, 1994, the following training providers did not renew their asbestos licenses and were no longer approved to teach any asbestos courses: Environmental Monitoring Service and Maxim Engineers. For a complete and updated list of approved asbestos training providers in Texas contact the Asbestos Trainer Licensing Section.

**Company:** F.W. Woolworth

**Location:** Dallas

**Violations:** Failure to Provide Notification, Failure to Conduct Mandatory Asbestos Survey, Failure to Employ a Licensed Contractor, Failure to Properly Dispose of Asbestos-containing Material, Failure to Follow Abatement Practices and Procedures.

**Fine:** \$10,000.

**Company:** La Quinta Inns, Inc.

**Location:** Arlington

**Violations:** Failure to Conduct Mandatory Asbestos Survey, Removing Asbestos without appropriate license, Failure to Employ licensed workers.

**Fine:** \$6,000.

**Company:** McCullough Heating and Air

**Location:** Austin

**Violation:** Removing Asbestos without appropriate license

**Fine:** \$1,000.

**Company:** Abatement Services, Inc.

**Location:** Center, Texas

**Violations:** Failure to Follow Abatement Practices and Procedures, Failure to Provide an Amended Notification.

**Fine:** \$4,050.

**Company:** Professional Services Industries, Inc. (P.S.I.)

**Location:** San Antonio

**Fine:** \$10,000.

**Company:** Fugro Environmental

**Location:** Arlington

**Violation:** Failure to Provide Notification

**Fine:** \$1,000.

**Company:** Fugro Environmental

**Location:** Arlington

**Violation:** Failure to Provide Notification

**Fine:** \$1,000.

**Company:** Tri-Pro Services

**Location:** Houston

**Violation:** Failure to Employ Licensed Asbestos workers

**Fine:** \$1,000.

**Company:** Young Contracting Services

**Location:** West University Village

**Violation:** Failure to Employ Licensed Asbestos workers

## Special Thanks to all Training Providers

The Asbestos Trainer Licensing Section would like to thank all training providers for their participation in the "Second Annual Texas Training Provider Seminar" held from October 3-4, 1994, in Austin, Texas. Their input and assistance was invaluable to the validation of the asbestos state accreditation examination.

### ASBESTOS PROFESSIONAL LICENSE SECTION

In our continuing effort to answer questions about the asbestos licensing process, the following are frequently asked questions and their answers for your quick reference.

**Q.** If my company/organization is licensed as a Contractor (or Operations and Maintenance Contractor), does my company/organization need to license someone as a Project Supervisor (or Operations and Maintenance Supervisor), or can we just license our workers to complete asbestos-related activities, or can our "Designated Person" perform as the supervisor over the workers on the job site?

**A.** If a licensed Contractor (or Operations and Maintenance Contractor) is employing registered workers to complete any asbestos-related activity, a licensed Project Supervisor (or licensed Operations and Maintenance Supervisor) must be employed to supervise any asbestos-related activity. Even though the "Designated Person" is required by the Rules to complete the Contractor/Supervisor training, the "Designated Person" may not perform as the Project Supervisor (or Operations and Maintenance Supervisor) during any asbestos-related activity unless licensed as a Project Supervisor (or Operations and Maintenance Supervisor). If your organization is licensed as a Contractor, a licensed Project Supervisor is required; if you are licensed as an Operations and Maintenance Contractor, you need either a Project Supervisor or Operations and Maintenance Supervisor.

Division of Occupational Health  
Asbestos Programs Branch Update  
1100 West 49th Street  
Austin, Texas 78756-3189  
*Carole Williams, Editor*

# AHERA

## SCHOOL ASBESTOS SEMINARS COMPLETED

The Toxic Substance Control Act Program (TSCA) within the Division of Occupational Health recently completed nine "Asbestos Regulatory Compliance Seminars for Schools" at various cities around the state. These seminars were presented in an attempt to bring a heightened awareness of the asbestos regulations to personnel within the schools who are most directly involved in complying with the regulations. A total of 323 school officials were present representing 172 schools across the state. Regulations covered included the Asbestos Hazard Emergency Response Act (AHERA) and the Texas Asbestos Health Protection Rules, as well as other related laws. The TSCA Program represents the U.S. Environmental Protection Agency (EPA) in conducting AHERA compliance inspections at public and private, non-profit schools, and has been conducting these inspections for the past nine years. For questions about AHERA compliance issues, the TSCA Program can be reached at 512-834-6600 or 1-800-452-2791.

### ASBESTOS PROGRAMS BRANCH UPDATE

A bulletin published in Austin, Texas, by the Texas Department of Health, Division of Occupational Health for the asbestos industry licensees and the general public.

Ruth F. Stewart RNC  
Chair, Texas Board of Health

David R. Smith, MD  
Commissioner

Carole Williams  
Public Information Officer, Editor



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